

Review of Dog Walking Policy

Community Services Committee Thursday, 15th June 2023

Report of: Deputy Chief Executive

Purpose: For decision

Publication status: Open

Wards affected: All

Executive summary:

In response to the tragic death of Natasha Johnston, a dog walker who died at Caterham Viewpoint, Gravelly Hill on 12th January, a multi-disciplinary Officer Working Group was created to consider the steps that could be taken to reduce the risk of this happening again.

The Anti-Social Behaviour, Crime and Policing Act 2014 gave powers to Local Authorities to introduce Public Space Protection Orders (PSPOs) for the control a range of issues linked to anti-social behaviour, including the control of dogs. Although the vast majority of dog owners behave in a responsible manner, the control of dogs remains a significant issue of concern for members of the public and even more so following the recent events described above and in other parts of the UK. Officers have considered various options and are seeking Committee approval to introduce a PSPO. This will require a full public consultation on the proposals. Officers will report back on the findings of the consultation prior to the Order being drafted.

This report supports the Council's priority of: Building a better Council

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Recommendation to Committee:

That:

- a) A six-week period of public consultation on the Draft Public Spaces Protection Order be undertaken.
- b) The proposals for Dog Control (as outlined in the report) be approved for inclusion in the consultation.
- c) A further report be presented to a future meeting of the Community Services Committee detailing the results of the consultation exercise and recommending the introduction of a PSPO at the earliest possible date.

Reason for recommendation:

The recommendation will support the Council's objective of minimising risk to dog walkers, dog owners and the general public.

1. Introduction and background

- 1.1. The Head of Operational Services and Contracts read a brief statement to Committee on 9th March 2023 in response to the statement and subsequent Resolution made at the previous Committee.
- 1.2. Officers resolved to prepare a paper to this Committee setting out the consultation process and options that could be pursued if the Council were to proceed with the introduction of a PSPO controlling dog walking and fouling on the Council's open Spaces.
- 1.3. Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 provides local authorities with the powers to create a PSPO where they are satisfied that activities conducted in a public place:
 - Have had, or likely to have, a detrimental effect on the quality of life of those in the locality.
 - Is, or is likely to be persistent or continuing in nature.
 - Is, or is likely to be unreasonable.
 - Justify the restrictions to be imposed.
- 1.4. The Order can last for a maximum of three years.
- 1.5. Research suggests that there are an estimated 12.5 million dogs in the UK and that a third of all households in the UK own a dog. In further research conducted by the Dogs Trust in 2020, a quarter of owners reported that their dog developed a new behavioural problem during the pandemic lockdown.

- 1.6. It is estimated that dogs produce more than 1,000 tonnes of waste each day, with up to 31% of owners admitting to not always cleaning up after their dogs. Dog mess is the most unacceptable and offensive type of litter in our public spaces and contact with dog faeces can lead to a number of serious infections such as toxocarasis which can lead to dizziness, nausea, asthma, blindness and seizures.

2. Public Space Protection Orders

- 2.1. The Council is keen to take measures to combat dog-related nuisance and is proposing to introduce a PSPO to give its enforcement officers the power to deal with dog owners who fail to properly control their dogs in public open spaces. This will help to ensure that residents and visitors can use and enjoy public spaces without experiencing anti-social behaviour and suffering a detrimental impact to their quality of life.
- 2.2. PSPOs may impose legally enforceable restrictions on certain activities or conduct of any person in the area to be covered. They may also impose lawfully enforceable specific restrictions on persons engaged in certain activities or conduct in the same area. Care must, however, be taken to ensure that any introduction of a PSPO does not knowingly cause displacement of the behaviour.
- 2.3. Any PSPO that is introduced must be legally robust and stand up to potential legal challenge.
- 2.4. The local authority must have evidence showing that what is happening in the relevant area has had or will have a detrimental effect on the quality of life of those in the locality and that it has been persistent or is likely to continue. The proposed PSPO must be a proportionate and appropriate response to this.
- 2.5. Consultation and Publication are legally required before an Order can be made. Local authorities are obliged to consult with the local Chief Officer of the Police, the Police and Crime Commissioner, owners or occupiers of land within the affected area and appropriate community representatives.
- 2.6. Signage would be installed in the areas affected, advising people that they are in a PSPO area and warning of the possible consequences of displaying any anti-social behaviour that is restricted by the Order. It is anticipated that the signage scheme would be supplemented by notices and public information to enhance public understanding of the requirements of the PSPO.
- 2.7. Any breaches of the PSPO by an individual would be enforced by the issuance of a £100 Fixed Penalty Notice at the time of the offence, which can be issued by a Police Officer, Police Community Support Officer (PCSO) and Council Officers (who have had the relevant enforcement training).

3. Licenced Businesses

- 3.1. Businesses that hold a licence for boarding dogs or providing day care facilities (which may include walking one or more dogs outside that property), are regulated by the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- 3.2. The number of businesses that are licensed under the Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 in Tandridge as of 23rd May 2023 is as follows:
- Boarding Kennels/Catteries 12
 - Day Care 6
 - Home Boarding 24
- 3.3. Licences are issued by the Environmental Health team. A licenced business is permitted to walk up to six dogs in a public area. However, if there is PSPO in place that limits the number of dogs to below this number, an offence would still be committed, regardless of whether the person is licenced under Animal Welfare Regulations.
- 3.4. Thirteen percent of dog owners in the UK now use professional dog walking services. However there is currently no national regulation or licencing regime covering this activity. Professional dog walkers are required to hold a licence (which includes a code of conduct) under our Parks and Open Spaces Charging Policy if they are using Tandridge parks and open spaces. There are currently only three dog walking operators licenced by this council. Enforcement is challenging, given the number of open spaces in our district and limited resources in this area, but officers are reviewing this policy following the recent tragic incident.

4. Options Implemented by other Authorities

- 4.1. Many local authorities are now reviewing their policies and PSPO restrictions following recent incidents which have been covered in the national press. Officers have researched the PSPOs that have been introduced or are being considered by other local authorities, including through a request via the Mallard regulatory support network. The results are below.

Local Authority	Restriction on number of dogs walked	Dogs on leads	Dogs on leads by direction	Exclusion(s) from certain areas (e.g. public playgrounds)
Derbyshire Dales	No	Y	Y	Y
Test Valley	No	Y	Y	Y

Chichester	No	Y	Y	Y
West Northants	4	Y	Y	Y
Adur & Worthing	6	Y	Y	Y
Croydon	4	Y	Y	Y
Reigate and Banstead	6 (considering reduction to 4)	Y	Y	Y
Surrey Heath	No	Y	Y	Y
Bromley	4	Y	Y	Y
Ipswich	4	Y	Y	Y

5. Issues for Consideration

- 5.1. When considering a PSPO and the recommendations, Members are reminded that the introduction of a PSPO should be based on evidence and not people's opinion or preferences.
- 5.2. The Order must stand up to potential legal challenge and it needs to be reasonable and proportionate to address specific ASB issues which are taking place. The evidence must show that there is a detrimental effect on the area in question and changes are needed to address this.
- 5.3. Council Officers will enforce breaches of the Order as far as is practicable within the available resources and will consider the options in conjunction with other agencies.
- 5.4. The Police have the ability to enforce breaches. However, the Police would be likely to only address breaches of the PSPO during their day-to-day activities if anti-social behaviour was demonstrated as a result.
- 5.5. Choosing not to take forward the consultation and consideration of a PSPO designed to encourage responsible dog ownership is not recommended. This is because of the potentially serious impact that the behaviour of a small number of irresponsible or inconsiderate dog owners and persons in control of dogs can have on the wider community. Without such measures, education and management regarding responsible dog ownership and control would be made be more difficult.

6. Consultation

6.1. Officers recommend that the Council enters into a formal consultation period in relation to the dog control restrictions that Officers are proposing be included within the Order. The consultation will be in the form of a detailed questionnaire that will be available to the general public via our website and social media platforms. The consultation will also be sent to other bodies such as Parish Councils, Surrey County Council and known relevant professional organisations.

6.2. The options considered are as follows:

Maximum number of dogs

It is proposed that no one person is allowed to walk more than four dogs in a public space at any time. Any person who is witnessed walking more than four dogs would be guilty of an offence. Officers view four dogs as the average number that is being enforced or considered by other local authorities.

Fouling of land by dogs

It is proposed that if a dog defecates at any time in a public space, and if the person who is in charge of the dog at the time, fails to remove the faeces forthwith, shall be guilty of an offence.

Dogs on Leads (not more than 1.5 metres in length) and Dogs on lead by direction (not more than 1.5 metres in length)

It is proposed that a person in charge of a dog shall be guilty of an offence if the person is not holding a dog on a lead in a public space and also if the person does not comply with a direction by an authorised officer to put and keep the dog on a lead of not more than 1.5 metres in length.

Dog exclusion

It is proposed that all dogs (with the exception of Guide Dogs or Special Assistance Dogs) would be excluded from certain areas, such as children's' play areas. It is proposed that a person in charge of a dog shall be guilty of an offence if the person does not comply with a direction given by an authorised officer to remove a dog from prohibited areas.

Key implications

Comments of the Chief Finance Officer

Although the consultation itself has no material financial implications, if adopted, the proposals may do. The report notes that the Council will enforce breaches as far as is practicable within the available resources and will consider the options in conjunction with other agencies. Activity in this area would need to be considered alongside other priorities, with resources deployed accordingly. The Council's budget position continues to be constrained and is likely to remain so across the medium-term.

Comments of the Head of Legal Services

The relevant legislation relating to PSPOs is the Anti-social Behaviour, Crime and Policing Act 2014 and Regulations made pursuant to it. These statutory provisions stipulate that before introducing, extending, varying or discharging a PSPO, there are certain requirements which the Council has to observe regarding consultation, publicity and notification.

Local authorities are required to consult with the local chief officer of police, the police and crime commissioner, owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. There are no strict rules governing the length of the consultation period but 4-6 weeks would appear to be a reasonable period. There are a set of well-established common law rules which set out the requirements of a lawful public consultation which are known as the Gunning principles. They were endorsed by the Supreme Court in the Moseley case.

The principles can be summarised as follows:

- Consultation should occur when proposals are at a formative stage;
- Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
- Consultations should allow adequate time for consideration and response;
- The product of consultation should conscientiously be taken into account by the decision maker.

There are a very significant number of judicial review cases which involve successful challenges to the lawfulness of a consultation undertaken by a public authority so it is imperative that the Gunning principles should be closely followed. There will be risks associated with those who will be tasked with enforcing the PSPO and appropriate training will need to be given. Risk assessments will need to be completed for the enforcement activity and all reasonable precautions taken to minimise any risk. There are also reputational risks in terms of the Council being perceived as enforcing against vulnerable persons and seeking to criminalise certain behaviours which would not normally attract fixed penalty notices or prosecution for non-payment.

The PSPO will raise expectations that prohibited behaviours will be eliminated entirely; however due to difficulties in identifying some of the contraventions and taking a proportionate approach to enforcement there will not always be immediate results which will be noticeable to the public.

Equality

There are no significant equality implications associated with this report. However, the Public Space Protection Order continues to have a positive impact on the community by addressing antisocial dog ownership by a minority of people. Dogs that aid those with disabilities will be excluded from the requirements of the Order.

The authority must also consider its proposed restrictions against the rights of freedom of expression (Article 10) and assembly (Article 11) under the European Convention on Human Rights. The proposed restrictions may be deemed to be against the rights in Article 10 and 11 but it is not considered that there will be any infringement on these rights. If there is any infringement it is considered that it is proportionate for the prevention of disorder and crime.

Climate change

There are no significant environmental / sustainability implications associated with this report.

Appendices

None

Background papers

None

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